is no answer to say that there are complete precautions against this risk, for there is no reason why he should be compelled to take such precautions.

"The contention is that the two . . . had a right to create a right in themselves, which, if observed, must derogate from the plaintiff's right, and then to say that it is inequitable in the plaintiff to act in derogation of this right so created. Surely the inequity begins earlier, and is in the defendant's derogating from the plaintiff's right without his consent." 1 Q. B. D. 536. This is the view of two of the Lords Justices, for Lindley, L. J., although he does not think *Swire* v. *Redman* to be law, says he should follow if he were free to do so. If the Texas court is correct, the creditor must at his peril remember to state that he reserves all his rights against the retiring partner, and, further, must be able to prove that he did so. Fisher, C. J., seems to hit the truth when he says, 24 S. W. Rep. 866: "An Act of the Legislature, or a judicial decision, that reaches to this extent, would unquestionably be opposed to the spirit of the fundamental law that protects the inviolability of contracts."

An interesting article in support of this view may be found in 14 Canadian Law Times, 57; but it must be admitted that the preponderance of authority is the other way.

"SUPERIOR SERVANTS" AND VICE-PRINCIPALS. — A year ago a summary investigation of the fellow-servant rule would have shown that in about ten States, and in the Supreme Court of the United States, there was recognized, to a greater or less extent, a judicial doctrine, wholly distinct from the rule everywhere prevalent as to a master's duty to have fit appliances, safe premises, and competent servants, to the effect that where there is a superior servant to whom another owes obedience, the master is absolutely responsible to the subordinate for the negligence of the superior, at least within the sphere as to which there is subordination; and the same investigation would have shown that *Chicago, Mil. & St. Paul Ry.* v. *Ross*, 112 U. S. 377, decided Dec. 8, 1884, had done much to help toward wider acceptance of this doctrine, indifferently known as the "superior servant," or the "vice-principal" doctrine. To-day this doctrine stands in a different position, and its future depends, perhaps more than on any other one thing, upon the effect which *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149 U. S. 368, decided last May, shall be deemed to have had on the Ross case. In the Ross case, a railway company was held to be responsible to a locomotive engineer for an injury resulting from the negligence of the conductor of his train. In the Baugh case, the company was held not to be responsible to a fireman for an injury resulting from the negligence of one who was acting as both conductor and engineer of a train consisting of engine and tender only; but two judges dissented, on the ground that to decide for the railway company was to overrule the Ross case. The majority thought that the two cases could be reconciled by considering a complete train as a distinct department of the company's business put in the conductor's charge.

There is, however, a great difference of opinion as to the real effect of this Baugh Case. In *Harley* v. *L. & N. R. R. Co.*, 57 Fed. R. 144 (C. C. Dist. Tenn., June 2, 1893), the doctrine of the Ross case was treated as so modified by the Baugh case that a new trial was granted,

because the jury had been instructed in accordance with the latter. The same view and the same result occurred in *What Cheer Coal Co.* v. *Johnson*, 56 Fed. R. 810 (C. C. A. Eighth Circuit, June 26, 1893), and yet in neither case was the Ross case treated as overruled. In *U. P. Ry. Co.* v. *Callaghan*, 56 Fed. R. 988 (C. C. A. Eighth Circuit, July 10, 1893), the Ross case was followed as to a conductor and an employee merely riding on the train. In *Minneapolis* v. *Lundin*, 58 Fed. R. 525 (C. C. A. Eighth Circuit, Oct. 30, 1893), the Ross case was not treated as overruled, and the doctrine of the Federal courts was said by Sanborn, J., to be, that if an employee is "entrusted with the entire management and supervision of all the business of the corporation, or with the entire management and supervision of a distinct and separate department of its business, . . . he may be termed a general vice-principal, because, in all his acts relative to the business of the corporation, he stands in the place of the master, and the latter is liable." So in *Bloyd* v. *St. L. & S. F. Ry. Co.*, 22 S. W. 1089 (Ark., July 1, 1893), the Ross case and the Baugh case were held to be distinguishable. In *A. T. & S. F. Ry.* v. *Martin*, 34 Pac. R. 536 (N. Mex., Aug. 16, 1893), a very elaborately considered case, the Ross case is treated as overruled, and the Baugh case said to contain "the view . . . held by the majority of courts, which base the fellow-servant relation upon the character of the negligent act, rather than upon the grade or department of work." In *Ill. C. Ry. Co.* v. *Spence*, 23 S. W. 211 (Tenn., Sept. 21, 1893), the Ross case is also said to be overruled; and, finally, the Supreme Court of Rhode Island, in *Hanna* v. *Granger* (March, 1894), says, in deciding the case of one injured by the negligence of the engineer of a steam-roller, who, although in charge of the work, was held to be acting at the moment as a fellow-servant (followed by the same court in *De Marcho* v. *Builders' Iron Foundry*, where a foreman threw a box upon a pile of iron posts), says that the Ross case is "explained. Indeed, we may almost say that it is explained away" by the Baugh case.

In view of the difference of opinion, no one will care at present to say what the final effect of the authorities will be. In the Ross case the Supreme Court introduced the doctrine into good society. How will it get along now that its sponsor seems to have disowned it? And will its sponsor take it up again?

RECENT CASES.

AGENCY — INDEPENDENT CONTRACTOR — LIABILITY OF OWNER OF PREMISES. — Defendant company made a contract with A, whereby he was to "fall and burn" the bush on defendant's land. A negligently lit a fire on the land while there was a strong wind blowing in the direction of plaintiff's land. The fire spread to plaintiff's land, doing great damage. *Held*, that defendant was liable for the negligence of its contractor, on the ground that the act to be performed was one necessarily attended with great danger, and a proprietor who authorizes it is bound to see that all reasonable precaution is observed. *Black* v. *Christ Church Finance Co.* [1894], App. Cas. 48 (Eng.).

This decision rests upon a well-recognized exception to the "Independent Contractor" doctrine, viz., that a principal is liable for the negligence of his contractor in performing a duty which the law absolutely imposes on the principal, or which is in its nature dangerous and liable to result in injuries to third parties. Mechem on Agency, § 747. It seems quite clear that this case falls within the exception.